

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

|                              |   |                           |
|------------------------------|---|---------------------------|
| IRFAN GOKCE,                 | ) | CASE NO. C06-1536-TSZ     |
|                              | ) |                           |
| Petitioner,                  | ) |                           |
|                              | ) |                           |
| v.                           | ) | REPORT AND RECOMMENDATION |
|                              | ) |                           |
| ALBERTO R. GONZALES, et al., | ) |                           |
|                              | ) |                           |
| Respondents.                 | ) |                           |
| _____                        | ) |                           |

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Irfan Gokce is a native and citizen of Turkey. On October 25, 2006, petitioner, proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his “indefinite” detention by the United States Immigration and Customs Enforcement (“ICE”). (Dkt. #1). On January 22, 2007, respondents filed a Return and Motion to Dismiss, arguing that petitioner’s continued detention is neither unlawful nor indefinite because his removal is likely to occur in the reasonably foreseeable future. (Dkt. #13).

Having carefully reviewed the entire record, I recommend that petitioner’s habeas petition (Dkt. #1) be DENIED and respondents’ motion to dismiss (Dkt. #13) be GRANTED.

01 II. BACKGROUND AND PROCEDURAL HISTORY

02 Petitioner, Irfan Gokce, has a lengthy immigration background, which is made more  
03 complicated by the fact that he suffers from mental illness. Petitioner is a native and citizen of  
04 Turkey. (Dkt. #13, Ex. 1 at 1-9; Ex. 2 at 1-35). On September 29, 2000, he entered the United  
05 States without inspection near Blaine, Washington, where he was apprehended by Border Patrol  
06 Agents. *Id.* The same day, the former Immigration and Naturalization Service<sup>1</sup> (“INS”), issued  
07 a Notice to Appear, placing petitioner in immigration proceedings and alleging removability  
08 pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), because he  
09 had entered the United States without inspection. *Id.* The factual and procedural background of  
10 those proceedings is set forth in the Order on Report and Recommendation entered on November  
11 18, 2003, in *Gokce v. Ashcroft*, Case No. C02-2568RBL, Dkt. # 43. (Dkt. #13, Ex. 1).

12 On November 12, 2004, the Immigration Judge (“IJ”) issued an order denying asylum,  
13 withholding of removal, withholding under Article 3 of the Convention Against Torture, and  
14 voluntary departure, and ordered petitioner removed from the United States to Turkey. (Dkt. #13,  
15 Ex. 2). Petitioner appealed the IJ’s decision to the Board of Immigration Appeals (“BIA”) which  
16 affirmed the IJ’s decision without opinion on May 3, 2005. (Dkt. #13, Ex. 3). On May 17, 2005,  
17 petitioner filed a Petition for Review with the Ninth Circuit Court of Appeals. *Gokce v. Gonzales*,  
18 No. 05-72895 (9th Cir. filed May 17, 2005). The Ninth Circuit entered a stay of removal which  
19 remains in effect. Petitioner’s Petition for Review is currently pending with the Ninth Circuit.

---

20  
21 <sup>1</sup> Effective March 1, 2003, the Immigration and Naturalization Service was abolished  
22 pursuant to the Homeland Security Act of 2002, 116 Stat. 2135, Pub. L. 107-296, *codified at* 6  
U.S.C. § § 101, *et seq.*, and its immigration functions were transferred to the Department of  
Homeland Security (“DHS”).

01 On October 25, 2006, petitioner filed the instant habeas petition, along with a motion to  
02 appoint counsel, which the Court denied on October 31, 2006. (Dkts. #2 and #4). On January  
03 22, 2007, respondents filed a Return and Motion to Dismiss. (Dkt. #13). On January 30, 2007,  
04 petitioner filed a response, Dkt. #14, and a supplemental response, Dkt. #15. The habeas petition  
05 and motion to dismiss are now ready for review.

### 06 III. DISCUSSION

07 Petitioner argues that he is “indefinitely imprisoned unjustly.” (Dkt. #1 at 7). Respondents  
08 argue that this case does not involve indefinite detention. (Dkt. #13 at 3). The Court agrees with  
09 respondents.

10 “When a final order of removal has been entered against an alien, the Government must  
11 facilitate that alien’s removal within a 90-day ‘removal period.’” *Thai v. Ashcroft*, 366 F.3d 790,  
12 793 (9th Cir. 2004)(citing *Xi v. INS*, 298 F.3d 832, 834-35 (9th Cir. 2002)); INA § 241(a)(1)(A),  
13 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following:

14 (i) The date the order of removal becomes administratively final.

15 (ii) If the removal order is judicially reviewed and if a court orders a stay of the  
16 removal of the alien, the date of the court’s final order.

17 (iii) If the alien is detained or confined (except under an immigration process), the  
18 date the alien is released from detention or confinement.

19 8 U.S.C. § 1231(a)(1)(B)(emphasis added); *see also Khotessouvan v. Morones*, 386 F.3d 1298,  
20 1300 n.3 (9th Cir. 2004) (stating that the 90-day removal period commences on “the date the  
21 order of removal becomes final; the date a reviewing court lifts its stay following review and  
22 approval of the order of removal; or the date the alien ordered removed is released from non-  
immigration related confinement.”). During the removal period, continued detention is statutorily

01 required. INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) (“During the removal period, the Attorney  
02 General shall detain the alien.”). Where removal cannot be accomplished within the ninety-day  
03 removal period, detention beyond the removal period is authorized by INA § 241(a)(6), 8 U.S.C.  
04 § 1231(a)(6). In *Zadvydas* the Supreme Court determined that, beyond those ninety days, the  
05 government is entitled to a presumptively reasonable period of detention of six months to bring  
06 about the alien’s removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 701, 121 S.  
07 Ct. 2491, 150 L. Ed. 2d 653 (2001). After the six month period, the alien is eligible for  
08 conditional release upon demonstrating that there is “no significant likelihood of removal in the  
09 reasonably foreseeable future.” *Id.*

10 Here, however, the *Zadvydas* rule is inapplicable for two reasons. First, petitioner’s  
11 removal period has not yet begun because the Ninth Circuit has stayed his removal pending his  
12 appeal. See INA § 241(a)(1)(B)(ii). Second, as respondents correctly argue, petitioner’s removal  
13 is reasonably foreseeable. Once the Ninth Circuit decides his appeal, ICE will remove or release  
14 petitioner. Thus, contrary to the petitioner in *Zadvydas*, petitioner’s detention is neither  
15 “indefinite” nor “potentially permanent.” *Zadvydas*, 533 U.S. at 690-91. Accordingly, petitioner  
16 fails to make a threshold showing of indefinite detention.

17 In his supplemental response, petitioner also asserts that his “Deportation-Proceeding and  
18 BICE-Detention is unlawful, because [he is] a Stateless Kurdish Asylee since June 12, 2002, and  
19 do[es] not wish to be deported to Turkey or any other Country — therefore [he is] undeportable.”  
20 (Dkt. #15 at 3). This Court lacks jurisdiction to consider petitioner’s claim that, because he is  
21 stateless asylee, he is undeportable, under the REAL ID Act of 2005. Judicial review of a final  
22 order of removal is governed by INA § 242, 8 U.S.C. § 1252, as amended by the REAL ID Act

01 of 2005. REAL ID Act of 2005, H.R. 1268, 109th Cong. (2005)(enacted), Pub. L. No. 109-13,  
02 Div. B, 119 Stat. 231 (“REAL ID Act”). This statutory provision provides, in part, that the  
03 exclusive means of asserting a challenge to a final order of removal and matters dependent  
04 thereon, such as the one challenged herein, is to file a Petition for Review with the appropriate  
05 court of appeals. 8 U.S.C. § 1252 (b)(2); (a)(5)(“[A] petition for review filed with an appropriate  
06 court of appeals in accordance with this section shall be the sole and exclusive means for judicial  
07 review of an order of removal entered or issued under any provision of this chapter”). This  
08 provision makes clear that the Court does not have jurisdiction to entertain petitioner’s challenge  
09 to his removal based on a claim that he is stateless asylee. Accordingly, petitioners habeas petition  
10 must be dismissed.

#### 11 IV. CONCLUSION

12 For the foregoing reasons, I recommend that respondents’ motion to dismiss be granted,  
13 and that the action be dismissed. A proposed Order accompanies this Report and  
14 Recommendation.

15 DATED this 17th day of May, 2007.

16 

17 Mary Alice Theiler  
18 United States Magistrate Judge  
19  
20  
21  
22